



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2004

Ms. Shelly O'Brien Yeatts
Assistant District Attorney
Dallas County
133 North Industrial Boulevard, LB-19
Dallas, Texas 75207

OR2004-9215

Dear Ms. Yeatts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211798.

The Dallas County District Attorney's Office (the "D.A.") received a request for the probable cause affidavits, executed search warrants, and inventory of seized items relating to a specified crime. You contend that under section 552.028 of the Public Information Act, the D.A. is not required to respond to the request for information. You also claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.028, which concerns requests for information from an incarcerated individual, reads as follows:

(a) A governmental body is not required to accept or comply with a request for information from:

- (1) an individual who is imprisoned or confined in a correctional facility; or
- (2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

(c) In this section, "correctional facility" means: (1) a secure correctional facility, as defined by Section 1.07, Penal code; (2) a secure correctional facility and a secure detention facility, as defined by Section 51.02, Family Code; and (3) a place designated by the law of this state, another state, or the federal government for the confinement of a person arrested for, charged with, or convicted of a criminal offense. .

Thus, under section 552.028, a governmental body has discretion to release requested public information to an incarcerated individual or to an incarcerated individual's agent. *See Hickman v. Moya*, 976 S.W.2d 360 (Tex, App.—Waco,1998), *cert. denied*, 527 S.S. 1009 (1999). Whether an individual is acting as an agent of an imprisoned individual is a factual determination that this office cannot make in the open records process. Open Records Decisions Nos. 554 (1990), 552 (1990). Consequently, we must rely on the representations of the governmental body requesting our opinion. *Id.* Because you have represented to this office that the requestor is acting as the inmate's agent, we conclude that section 552.028 is applicable in this instance. Therefore, the D.A. may decline to accept or comply with this request for information. In light of this conclusion, we need not address your claimed exception to disclosure of the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

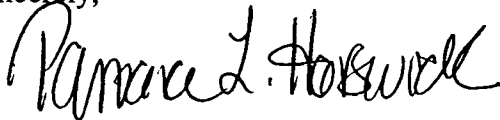
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 211798

Enc. Submitted documents

c: Mr. Shane Riley
239 West Vestal
San Antonio, Texas 78221
(w/o enclosures)